

DOCKET NO. 2003.07.011.WT0
U.S. SERIAL NO. 10/600,223
PATENT

REMARKS

Claims 1-24 were originally filed in the present application.

Claims 1-24 are pending in the present application.

Claims 1-24 were rejected in the April 19, 2007 Office Action.

No claims have been allowed.

Reconsideration of the claims is respectfully requested.

In Sections 6 and 7 of the April 19, 2007 Office Action, the Examiner rejected Claims 1-24 under 35 U.S.C. §102(b) as being anticipated by U. S. Patent Application Publication No. 2004/0068721 to *O'Neill, et al.* (hereafter, simply "O'Neill").

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-76 (8th ed., rev. 4, October 2005) (citing *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. *Id.* (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

The Examiner indicates that the previous response amounted to "a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims distinguishes them from the references." The Examiner is clearly in error. The Examiner makes this statement in the final office action after reproducing a portion of the previous response that

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specifically indicates patentably distinct limitations of the claims and illustrating that they are not taught or suggested by the references. In fact, the previous response fully traversed the rejections, and complied with 37 CFP 1.111(b) by showing that the Examiner entirely failed to meet his burden for an anticipation rejection.

Claim 1 requires a wireless communication device comprising, among other limitations, a first CPU and a second CPU, each with specific capabilities. This is not taught or suggested by O'Neill. O'Neill's primary description of its "wireless communication device" is in paragraph 0032, reproduced below, and neither this paragraph nor anything else in O'Neill includes an explicit teaching of a CPU or other processor at all, although it is of course reasonable to assume that a processor must be present to perform the tasks described. Such an assumption does not support an anticipation rejection, however.

O'Neill does not teach a first CPU capable of controlling wireless communications with a wireless network, having a first memory associated with it. This is a specific limitation of claim 1, and patentably distinguishes this claim from O'Neill. The Examiner incorrectly indicates that this feature is taught by O'Neill at paragraphs 0014 and 0032:

[0014] In one embodiment, the method comprises distributing a software update to a wireless communication device. The wireless communication device incorporates the software update by way of its primary update environment. A distribution environment provides a suitable distribution node, by which software updates may be efficiently distributed to the wireless communication device.

[0032] FIG. 2 is a system diagram of a wireless communication device 209 in accordance with an embodiment of the invention. The

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wireless communication device 209 comprises a primary update environment 215, a non-volatile memory 217, and a volatile memory 225. The primary update environment 215 comprises a download agent 219, an update agent 221, an upload agent 223, and a transport protocol module 227. The download agent 219 facilitates the download and incorporation of software from a distribution environment while the upload agent 223 uploads software or a subset of software resident in the wireless communication device 209, such as one or more software modules resident in non-volatile memory 217 of the wireless communication device 209, to accommodate incorporation of one or more software updates from the distribution environment. In one embodiment, the upload agent 223 uploads software from the non-volatile or volatile memories 217, 225 of one or more wireless communication devices 209 into one or more storage devices in the distribution environment. In this example, the distribution environment may generate appropriate software updates by processing the uploaded software to generate one or more suitable software updates for the one or more wireless communication devices 209. After processing is completed, the distribution environment may subsequently download the one or more software updates back into the one or more wireless communication devices 209. In addition to being able to initiate a software update, it is contemplated that the wireless communication device 209 may be able to automatically initiate an update of any application, driver, and other necessary software required for proper operation of the wireless communication device 209. The non-volatile and volatile memories 217, 225 function to store and run one or more software programs for operation of the wireless communication device 209. The download, update, and upload agents 219, 221, 223 and transport protocol module 227 may comprise hardware and/or software configured to perform the previously described processes or operations. In one embodiment, the wireless communication device 209 incorporates a user interface in which a user inputs requests for software updates. The user interface may comprise a keypad, LCD touch screen, voice recognition system, or the like. It is contemplated that the user may input one or more parameters that specifies or automates the process of downloading a particular software update.

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As is clear, there is no specific teaching of any "first CPU" at all, and although O'Neill mentions a memory, there is no specific teaching of a memory associated with a first CPU, as claimed. As the Examiner is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the Examiner has failed to make a proper anticipation rejection.

O'Neill does not teach or suggest a second CPU capable of executing an end-user application on the wireless communication device, and a second memory associated with it. The Examiner incorrectly states that a second CPU is taught by O'Neill in paragraph 0011:

[0011] One or more systems and methods are disclosed to provide software updates to one or more wireless communication devices. The systems and methods described facilitate efficient and effective updating of firmware and/or software resident in the one or more wireless communication devices.

It is clear that the Examiner completely misdescribes this paragraph as having any teaching of a second central processing unit (CPU) in the wireless communications device that is capable of executing at least one end-user application on said wireless communication device. O'Neill doesn't specifically teach even one CPU in a wireless communication device, and certainly doesn't teach or suggest a wireless communication device having both a first CPU and a second CPU, as required by claim 1. As the Examiner is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the Examiner has failed to make a proper anticipation rejection.

O'Neill certainly does not teach or suggest that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in a second memory

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associated with the second CPU, as claimed. The Examiner alleges that this feature is taught in paragraph 0032, reproduced above, but is a clear mischaracterization of O'Neill's teachings. O'Neill does not teach a wireless device having a first memory associated with a first CPU and a second memory associated with a second CPU, as in claim 1. O'Neill does not teach a wireless communication device wherein a first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in a memory associated with a second CPU, as required by claim 1. As the Examiner is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the Examiner has failed to make a proper anticipation rejection.

O'Neill therefore does not teach or suggest the limitations of independent claim 1, or similar limitations of independent claim 13. All rejections are therefore traversed, in detail, with particular emphasis on the Examiner's complete failure to meet his legal burden of a proper anticipation rejection. This is a legally and factually deficient rejection, as can be discussed both in a pre-appeal review request and again on appeal, if necessary.

Further, as O'Neill does not teach or suggest multiple processors, it does not teach or suggest an interprocessor communication unit as in claims 4 and 7. The Examiner again makes a mistaken reference to paragraph 0032, above, and further makes reference to element 223 of Figure 2. O'Neill describes that

the upload agent 223 uploads software or a subset of software resident in the wireless communication device 209, such as one or more software modules resident in non-volatile memory 217 of the wireless communication device 209, to accommodate incorporation

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of one or more software updates from the distribution environment. In one embodiment, the upload agent 223 uploads software from the non-volatile or volatile memories 217, 225 of one or more wireless communication devices 209 into one or more storage devices in the distribution environment.

O'Neill also describes that the "distribution environment" is "one or more network nodes from which software may be downloaded". As such, "upload agent 223" uploads software from the wireless communications device to a network node. It does not transfer a downloaded software upgrade file from a second memory (associated with a second CPU of the wireless device) to a first memory (associated with a first CPU of the wireless device) by an interprocessor communication unit. As the Examiner is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the Examiner has failed to make a proper anticipation rejection.

O'Neill further does not teach or suggest the specific code replacement as claimed, e.g., in claims 2 and 9. The Examiner again refers to paragraph 0032 for support of his rejection, and again is incorrect. Paragraph 0032 does not teach or suggest a CPU—it doesn't specify a CPU at all—that is capable of executing a first upgrade agent program that replaces existing code in a first memory with replacement code from a downloaded software upgrade file. This paragraph doesn't teach code replacement at all. As the Examiner is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the Examiner has failed to make a proper anticipation rejection.

All rejection are traversed.

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Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 102 rejection with respect to all claims.

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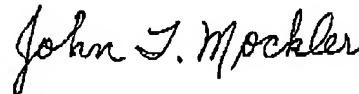
SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.



John T. Mockler
Registration No. 39,775

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P.O. Drawer 800889
Dallas, Texas 75380
Phone: (972) 628-3600
Fax: (972) 628-3616
E-mail: *jmockler@munckbutrus.com*